



DOUGLAS T. SLOAN
City Attorney

November 10, 2016

MEMORANDUM

TO: Marijuana Businesses

RE: City Laws Applicable to Marijuana Businesses

Medical Marijuana

In addition to federal and state laws applicable to marijuana, the City of Fresno has adopted local laws. Fresno Municipal Code section 15-2739-D provides:

A medical marijuana dispensary and/or medical marijuana cooperative shall be allowed only in a zone district designated for medical offices and only if consistent with state and federal law.

Under federal law, it is illegal to possess, cultivate, or distribute marijuana. Therefore, a medical marijuana dispensary or cooperative would be illegal under federal law, and is consequently a prohibited use in the City of Fresno.

The City of Fresno is not issuing local licenses and permits required to establish a medical marijuana business under California law because a medical marijuana business is not an allowed use in the City of Fresno.

California Business and Professions Code section 19340(a) states:

Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

Since medical marijuana dispensaries are prohibited in the City of Fresno, medical marijuana delivery businesses are also not permitted.

Recreational Marijuana

The voters of the State of California approved Prop 64 (the Adult Use of Marijuana Act (Act)) that created a licensing and regulatory framework for recreational marijuana. Under the Act, recreational marijuana is legal if it is purchased from a state licensed retailer. The Act will be overseen by the Bureau of Marijuana Control with licenses issued beginning in 2018. Dispensaries would not be legal prior to 2018. The City of Fresno does not currently have a ban on recreational marijuana dispensaries. Therefore, unless the City of Fresno approves an ordinance prohibiting dispensaries, a recreational marijuana business would be legal beginning January 1, 2018.

Cultivation

The Act now allows a person 21 years of age or older to possess, within a single private residence, up to six marijuana plants.

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Fresno Municipal Code section 12-2104 provides:

Marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in all zone districts within the city.

The City of Fresno currently prohibits all indoor and outdoor marijuana cultivation. This prohibition on indoor growing may be preempted and up to six indoor plants per residence would be allowed under state law.

The foregoing is only a general outline of applicable local provisions. Individuals are responsible for ensuring compliance with all federal, state, and local laws. The City Attorney's Office does not provide legal advice to the public.

Respectfully submitted,



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Deputy City Attorney

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